

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 53 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

COMMISSIONER OF INCOME TAX

Versus

M/S.AMOD STAMPING

Appearance:

1. INCOME TAX REFERENCE No. 53 of 1998
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 28/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question of law has been referred for our opinion for the assessment year 1989-90:-

"Whether, the Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Income-tax (Appeals) holding that the deduction under Section 80-I should be given without any deduction under Section 80-HH from the total income?"

2. We have heard Mr Manish R Bhatt, learned Standing Counsel for the revenue. Though served, none appears for the respondent-assessee.

3. At the hearing of this reference, our attention is invited to the decision dated 13/14th June 2001 of another Division Bench of this Court in Income Tax Reference No.282 of 1985 wherein this Court examined the scheme of the provisions of Section 80HH and Section 80J and after considering the legislative history, the object of granting deductions under the above provisions, the manner in which the deduction is to be calculated and the fact that the benefit of deduction under Section 80HH is given to those industrial units which established their industries in a backward area, whereas deduction under Section 80J is given to new industrial units, without any such geographical limitations, and also that the provisions of Section 80J permit carry forward if the assessee is not able to avail complete deduction under Section 80J on account of not having sufficient profits, this Court interpreted the provisions of Section 80HH(9) to mean that while first of all the benefit under the provision of Section 80HH is to be given to the assessee, if the profits are sufficient to absorb the deduction under Section 80J or a part thereof and if the profits are not sufficient then the deduction under Section 80J is to be carried forward as per subsection (3) thereof. It does not mean that while giving effect to the deduction under Section 80J, the deduction available under Section 80HH is to be deducted from the profits. Accordingly, this Court answered the question in that case in favour of the assessee and against the revenue.

4. Although the controversy in the present case is in context of availing deduction under Section 80I and Section 80HH, the same principle would apply because subsection (5) of Section 80I also permits carry forward of the deduction upto seven assessment years after the initial assessment year. In fact, the assessee's case is

strengthened in the context of availing deduction under Section 80HH and Section 80I.

For the relevant assessment year 1989-90, the provisions of sub-section (1) of Section 80J clearly provided that for computing total income of the assessee under Section 80J, a deduction from the profits and gains (as reduced by the deduction, if any, admissible to the assessee under Section 80HH or Section 80HHA) of so much of the amount thereof as does not exceed the amount calculated at the rate of six per cent per annum on the capital employed in the industrial undertaking

Now the underlined bracketed words are not to be found in subsection (1) of Section 80I, which simply provides that, "where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking to which this Section applies, there shall, in accordance with, and subject to the provisions of this section be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof."

Section 80J was inserted by Finance (No.2) Act, 1967 w.e.f. 1.4.1968 and the bracketed portion in Section 80J referring to Section 80HH was inserted/substituted by the Taxation Laws (Amendment) Act, 1975 w.e.f 1.4.1976 and the bracketed portion for Section 80HHA was inserted by Finance (No.2) Act w.e.f 1.4.1978. Hence while inserting Section 80I in the year 1981, the legislature was conscious of the formula prescribed in Section 80J w.e.f. 1.4.1976 under which for computing the total income of the assessee, a deduction from such profits and gains as reduced by deduction, if any, admissible to the assessee under Section 80HH or Section 80HHA was required to be made.

In view of absence of the aforesaid bracketed words in the provisions of Section 80I, we have no manner of doubt that while computing the profits for the purpose of availing deduction under Section 80I, the profits and gains of the assessee's business are not required to be reduced by the deduction admissible under Section 80HH.

5. In view of the above discussion, our answer to the question is in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference accordingly stands disposed of.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)

zgs/-